IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

WILLIAM PAUL AULD,	)	CV 10-70-M-DWM
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
STATE OF MONTANA; ATTORNEY	)	
GENERAL OF THE STATE OF	)	
MONTANA,	)	
	)	
Respondents.	)	

Petitioner William Auld filed this action for a writ of habeas corpus

pursuant to 28 U.S.C. § 2254. He is a state prisoner proceeding pro se. United

States Magistrate Judge Jeremiah C. Lynch ordered Auld to show cause why the

petition should not dismissed as time barred or procedurally defaulted. After

receiving Auld's brief in response to the order, Judge Lynch entered Findings and

Recommendation in this matter on July 7, 2010. Judge Lynch recommended

dismissing the petition because it is both time barred and procedurally defaulted.

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Auld timely objected on July 13, 2010. Therefore, he is entitled to de novo review of those portions of the Findings and Recommendation to which he objected. 28 U.S.C. § 636(b)(1). The portions of the Findings and Recommendation not specifically objected to will be reviewed for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

Judge Lynch recommended denying Auld's petition as time barred because it was not filed within one year of the date his conviction became final. 28 U.S.C. § 2244(d)(1)(A). Judge Lynch also found the petition is procedurally defaulted because the Montana Supreme Court denied Auld's state habeas petition on the grounds that it was barred by Mont. Code Ann. § 46-22-101(2). Judge Lynch found the Montana Supreme Court denied Auld's claims based on his failure to comply with a firmly established and consistently applied state procedural requirement, without considering the merits of the federal claims. See Collier v. Bayer, 408 F.3d 1279, 1284 (9th Cir. 2005). Therefore, his federal petition is procedurally barred. Judge Lynch recognized that Auld could be excused from the time bar and procedural default if he could make a showing of actual innocence. See Schlup v. Delo, 513 U.S. 298, 327 (1995). Judge Lynch found Auld had not made a showing of actual innocence because his own statements confirm his guilt and he has not offered anything other than his claim that he is

innocent.

Auld objects to Judge Lynch's findings, in large part by stating conclusory allegations that Judge Lynch did not consider his filings, the Court has not considered all of the evidence, and Montana law is being unconstitutionally used to bar his petition. Auld offers no law or facts to support his statements. Judge Lynch's Findings and Recommendations demonstrate that he considered everything in both Auld's petition and brief in response to the show cause order. Auld has offered nothing to undermine Judge Lynch's finding that the petition is time barred and procedurally defaulted.

Auld also argues he has met the standard for actual innocence. He merely restates his arguments from his earlier filings and offers allegations that his conviction was obtained by perjury and misrepresentation. His unsupported accusations are insufficient to meet the high standard necessary under Schlup, that "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." Schlup, 513 U.S. at 327. As Judge Lynch found, Auld's own statements show there was evidence against him that would have permitted a reasonable juror to find him guilty. Auld cannot show actual innocence.

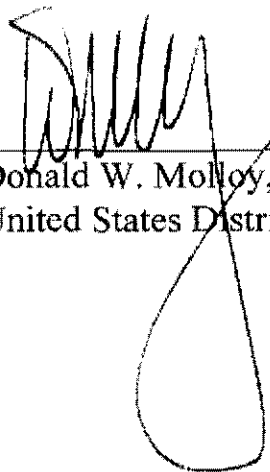I find no clear error in Judge Lynch's remaining findings and

recommendations. Accordingly,

IT IS HEREBY ORDERED that Judge Lynch's Findings and

Recommendation (dkt #6) are adopted in full. The Petition (dkt #1) is

DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

The Clerk of Court is directed to enter by separate document a judgment in

favor of Respondents and against Petitioner.

DATED this 29 day of July, 2010.

Donald W. Molloy, District Judge
United States District Court

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